

301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

301 CMR 22.00: COASTAL FACILITIES IMPROVEMENT PROGRAM AND HARBOR PLANNING PROGRAM

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22.01: Authority

301 CMR 22.00 has been approved by the Secretary of the Massachusetts Executive Office of Environmental Affairs (EOEA) (hereinafter referred to as the Secretary) and are promulgated by the Director of the Massachusetts Coastal Zone Management Office (MCZM) (hereinafter referred to as the Director) pursuant to the authority granted to him under St. 1983, c. 589 and St. 1987, c. 768 (hereinafter referred to as the Acts). The Acts create the programs to be commonly known as the Coastal Facilities Improvement Program (CFIP) and the Harbor Planning Grants Program (HPGP).

22.02: Purpose

301 CMR 22.00 is promulgated to help clarify the provisions of M.G.L. c. 21F, §§ 1 through 7 by establishing uniform funding procedures and requirements. 301 CMR 22.00 shall complement the Act and have the force of law after they have been formally submitted to the Secretary.

The purposes of CFIP are:

- (a) to ensure that adequate and well-maintained public facilities exist to support the Commonwealth's fishing, marine, tourist, and recreational industry in the coastal zone;
- (b) to provide flexible and affordable financial programs for the Commonwealth's coastal cities and towns so they can plan for, construct, reconstruct, maintain and improve public coastal facilities;
- (c) to improve planning for coastal facilities consistent with the policies of the Executive Office of Environmental Affairs;
- (d) to encourage greater cost sharing between the public and users of public facilities financed with public funds.

The purposes of preparing a Harbor Plan are:

- (a) to initiate comprehensive studies of factors relevant to beneficial use and preservation of harbor resources, both natural and man-made;
- (b) to state and analyze major problems and opportunities concerning future development and its social, economic and environmental consequences;
- (c) to set forth goals regarding the desired sequence, patterns and characteristics of future development activity in a harbor area;
- (d) to analyze the probable economic, social and environmental consequences of proposed goals; and
- (e) to identify a set of strategies that, when implemented, will achieve the proposed goals.

22.03: Definitions

As used in St. 1983, c. 589 § 19, St. 1987, c. 768, § 1 and in 301 CMR 22.00, the following words shall have the following meanings:

Applicant, the chief executive of any coastal city or town, as set forth in M.G.L. c. 21F, § 4, and identified in the Massachusetts Coastal Zone Management Plan (MCZMP).

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Coastal Facilities, any facility among those listed in M.G.L. c. 21F, § 2 as a "harbor facility" or a "waterfront facility." Those facilities include:

- (a) Harbor facility, any existing or proposed public dredged channel, spoil disposal area, bulkheads, ripraps, piers, wharves, fill, docks, floats, beaches or other structures used for fishing, marine industry, or commerce, marine recreation or public access purposes.
- (b) Waterfront facility, public upland platforms, public buildings containing harbor related facilities or public spaces or structures used for fish or vessel and related equipment handling or storage, and parking facilities and walkways necessary for access to said waterfront facility.

Coastal city or town, any municipality included in the description set forth in the MCZMP at 301 CMR 20.99, and on file with the MCZM Director, acting through its municipal officers, including but not limited to its agencies.

Coastal Facility Planning, any designs, plans or relevant documentation which are prepared for and directly support or describe the coastal facility specified in the application for funds under M.G.L. c.21F, §§ 1 through 7, and are not previously used as part of matching funds for any other grant or reimbursement program. To be eligible for reimbursement under this Act, expenditures for these plans shall be dated on or after January 1, 1983.

Dredging, pursuant to M.G.L. c. 21F, § 6(g), no funds authorized by the Act shall be used to reimburse expenditures for dredging as defined in 310 CMR 9.04(26). Any expenditures for dredging which are undertaken by the applicant:

- (a) specifically to implement the project proposed by the applicant; or
- (b) directly related to the proposed project; or
- (c) to prepare the proposed project site;

These costs may be counted as part or all of the applicant's matching funds as set forth in 301 CMR 22.08.

Director, the Director of MCZM as provided in M.G.L. c. 21A, § 13, as amended in St. 1983 c. 589.

Harbor Plan, a document (in words, maps, illustrations and other media of communication) setting forth, among other things: a coastal community's objectives, standards, and policies for guiding public and private utilization of land and water bodies within a defined harbor planning area; an implementation program which specifies the legal and institutional arrangements, financial strategies, and other measures that will be taken to achieve the desired sequence, patterns and characteristics of development and other human activities within the harbor area.

Improvements, projects or undertakings defined in the Act involving planning, engineering, repair, construction or reconstruction which is the subject of an application under the Act which is:

- (a) separate and distinct;
- (b) in one geographic area; and
- (c) identified in a site plan accompanying the application.

Public, any structure or land owned and maintained by a coastal city or town, or the Commonwealth, or by the Federal government.

Reimbursable Costs, costs incurred by the applicant for any or all of the items listed in M.G.L. c. 21F, § 2. These costs shall be supported in the application by documentation and proof of expenditure as described in 301 CMR 22.08(2).

22.04: State Action

- (1) Upon the receipt of an application the Director may authorize or engage in the following:
 - (a) A field inspection of the land and facilities included in the proposed project for the purpose of verifying and evaluating the elements set forth in the application.

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22.04: continued

- (b) Referral of the project to other relevant agencies of the Commonwealth for an opinion of the projects compatibility or consistency with the policies of the Commonwealth.
- (c) Consultation sessions with local officials on the harbor planning application to ensure compatibility or consistency with the harbor planning guidelines as developed by the MCZM Office.

22.05: Eligibility Criteria and Conditions

- (1) Coastal cities and towns as defined in the MCZM Program, and in 301 CMR 22.03(3) and on file with the Massachusetts CZM Office, shall be eligible for assistance under this program.
- (2) The following are minimal conditions which must be met by eligible applicants to qualify for funding for improvements involving coastal facilities:
 - (a) The proposed project must be public for the duration of the Commonwealth's debt obligation.
 - (b) The proposed project site must be determined by the Secretary, through the MCZM Office, to be:
 - 1. substandard as defined in M.G.L. c. 21F, § 2, or
 - 2. within an approved Commercial Area Revitalization District (CARD) on file with the Secretary of the Massachusetts Executive Office of Communities and Development (EOCD), or
 - 3. within a Designated Port Area (DPA), or
 - 4. within a Special Assistance Development Area; (SADA) presently designated under the MCZM Program.
 - (c) The project must be related to fisheries, shellfishing, marine commerce/industry, marine recreation, marine tourism, or public access.
- (3) The following are minimal conditions which must be met by eligible applicants to qualify for funding for harbor planning. The proposed planning area must be determined by the Secretary, through the MCZM Office, to be:
 - (a) within or contain a Designated Port Area (DPA), or
 - (b) within or contain a Developed Harbor as defined by the 1978 MCZM Program in Policy 19, or
 - (c) within or contain a Commercially Important Harbor as listed in the Massachusetts Marine Fisheries Management Policy Report (March 1977), or
 - (d) within or contain an approved waterfront Commercial Area Revitalization District (CARD) which is on file with the Secretary of the Massachusetts Executive Office of Communities and Development (EOCD), or
 - (e) within or contain a Special Assistance Development Area (SADA) presently designated under the MCZM Program
 - (f) substandard as defined in M.G.L. c. 21F, § 2.

22.06: Procedures for Application

All coastal cities or towns which have received notification that financial assistance is available under the provisions of M.G.L. c. 21F, §§ 1 through 7, through the CFIP, may apply for assistance.

- (1) The applicant shall be responsible for submitting a completed application form provided by the Director of MCZM, to the Director. Such application shall include the following information:
 - (a) A site plan of the project area, drawn to scale, with all proposed and existing structures shown thereon and any other information necessary to identify the location and characteristics of the project;

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- (b) A written description and detailed summary of the proposed project, including all engineering and design specifications necessary to obtain any licenses or permits as required by 301 CMR 22.06(1)(h) and in M.G.L. c. 21F, § 6(d);
 - (c) A written statement documenting that the proposed improvement shall serve the public interest and that it is consistent with community wide needs and priorities;
 - (d) A written statement documenting that the proposed improvement will have a significant economic impact on the fishing, marine, recreational and/or tourist industries or provide significant public benefits;
 - (e) A record of title for the property to be improved noting any encumbrances or restrictions;
 - (f) A written statement that demonstrates that the proposed project is consistent with and carries out EOE and MCZM guidelines and policies, and is consistent with other state programs affecting the project area;
 - (g) A written statement which discusses the following harbor management issues:
 - 1. Existing and proposed uses in the harbor where the project is located,
 - 2. The physical location and status of existing harbor facilities and infrastructure,
 - 3. The harbor-wide administrative procedures,
 - 4. A summary of the goals and objectives for the harbor,
 - 5. The long-term plans for the maintenance of the public facilities.
 - (h) Written documentation that all licenses, permits or other approvals required by local, state and federal agencies have been sought or obtained by the date of application;
 - (i) Documentation that the funds required to complete the total project are or will be secured as required in M.G.L. c. 21F, § 6(e);
 - (j) Documentation that the application for assistance has been approved by the city or town as set forth in M.G.L. c. 21F and 301 CMR 22.07(1);
 - (k) A detailed budget which defines and allocates the projected total costs of the proposed improvement, the total expenditures and the source of the revenue needed for the total project;
 - (l) If applicable, documentation that the use of the project generated revenue from fees or other sources will be used to operate, maintain, or manage the improvement, or pay off any debt incurred by the construction of the improvement.
- (2) The applicant for harbor planning financial assistance shall be responsible for submitting a completed application form, provided by the Director of MCZM, to the Director. Such application shall include the following information:
- (a) Establishment of need for a comprehensive harbor plan.
 - 1. Identify preliminary harbor area boundary on charts, maps and topographic maps.
 - 2. Identify issues and problems of the harbor. Describe the harbor uses, both land and water, and the conflicts between harbor users. Describe the positive attributes of the harbor to be built upon and the problems to be addressed.
 - 3. Identify the role of a harbor plan in managing the issues and problems of the harbor. Describe how development of a harbor plan will assist the community in achieving goals. Justify the need in the community for a comprehensive harbor plan.
 - 4. Preliminarily discuss the possible goals and objectives for the harbor (both land and water uses).
 - (b) Description of capability to complete a comprehensive plan.
 - 1. Identify a core group or central coordinating person for the planning process. Describe the role of this person or group, his or her capacity to guide the development of the plan, and the general strategy that will be used to involve all affected interest groups in the planning process. If a consultant will be retained, describe how the consultant, the core group, and the community at large will interact. Identify the responsibilities of each.
 - 2. List existing data base for inventory of natural and man-made resources. Describe any progress made in mapping, inventory, or identification of resources.
 - 3. Describe the public interest and community support for participating in the open planning process. Describe the support and limitations of local agencies, boards, staff members, citizens, associations and advocacy groups to participate in the development of the plan.

22.06: continued

4. Provide a detailed budget outlining the financial resources that have been dedicated to the project, and the personnel and other local resources that will be available to develop the plan including printing and dissemination to appropriate parties.
 5. Outline the jurisdictional authorities within the planning area.
 - (c) Outline of methodology and structure and planning process.
 1. Outline the methods that will be employed for completing the comprehensive inventory. Describe the extent of detail and the type of information that will be sought in the inventory.
 2. Describe proposed method for: establishment of goals, objectives, standards, and policies; conduct of relevant planning studies, including data collection and analysis; and development of an implementation program, as well as, a renewal process for reviewing the plan. In addition, describe the public involvement process, explaining how all affected interest groups will have ample opportunity to influence all aspects of the planning process.
 3. Discuss the extent to which the above methods are consistent with MCZM's Harbor Planning Guidelines (including amendments thereto), and explain the reasons for any significant departures or variations therefrom.
 - (d) Provide a draft scope of work or Table of Contents of the plan. Outline the major milestones of the planning process.
- (3) Applications will be requested, and awards conferred, on an annual grant round basis. The application review process and other details of the application will be outlined in the Program Guides for Coastal Facilities and Harbor Planning, and other materials distributed by MCZM upon commencement of the program.

22.07: Assurances

In addition to those assurances made as part of the application form, the applicant shall provide the following information to the Director:

- (1) The applicant will certify that it possesses the legal authority to apply for the funds, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- (2) The applicant will give EOEa or its designee, through an authorized representative, access to and right to examine all records, books, papers, or documents related to the funding from M.G.L. c. 21F.
- (3) The applicant will bear the fiscal responsibility for any and all cost overruns for the completion of the proposed improvement unless:
 - (a) The applicant can document it has sought and applied for funding for which it may be eligible from private as well as local, state and federal governmental sources and has been denied funding from these sources;
 - (b) The proposed overrun expenditures (and their cause) have been outlined by the community and examined by MCZM and MCZM is assured that the community has tried all reasonable alternatives to eliminate the overruns. Alternatives should include, but not be limited to:
 1. reducing the scale of the project;
 2. rebidding the project; or
 3. separating the project into components for independent bids.
 - (c) The community can document that it can finance 100% of the overrun until the Commonwealth reimburses the community for its 50% share; and
 - (d) There are CFIP funds available to cover the cost of the overrun.

22.07: continued

- (4) The applicant shall obtain a performance bond from all contractors and relevant insurance for project completion.
- (5) The applicant will agree to operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable federal, state and local agencies for the maintenance and operation of such facilities.
- (6) The applicant will not dispose of its title or other interests in the site for the duration of the bond indebtedness.
- (7) The applicant shall be in compliance with the affirmative action regulations set forth at 301 CMR 50.00 as well as the requirements of Executive Order 215.

22.08: Fiscal Considerations

Any project or improvement costs as defined in M.G.L. c. 21F §§ 1 through 7 in 301 CMR 22.00 and eligible for reimbursement by EOE, shall be approved for reimbursement under the CFIP. The Secretary shall reimburse up to 50% of the total project costs as identified in the funding agreement between the applicant and EOE.

(1) Under no circumstances shall the funds under M.G.L. c. 21F, §§1 through 7 be used to reimburse expenditures for dredging activities. However, dredging expenditures by the applicant as defined in 301 CMR 22.03(4) may be counted as matching costs. These expenditures may only be counted as match if the dredging activity is carried out with the proper permit and approvals of all relevant local, state and federal agencies. Funds provided for under M.G.L. c. 21F, §§1 through 7 for Harbor planning may be used for harbor-wide dredging planning activities as set forth by MCZM in the Harbor Planning Guidelines.

- (2) Reimbursement will be made only after the applicant has demonstrated the following:
- (a) 100% financing for the total project costs has been obtained;
 - (b) The amount of money equal to the amount set forth in the billing submitted to EOE for reimbursement has been expended;
 - (c) Documentation on all billing invoices shall include:
 - 1. Copies of the front and back of cancelled check(s), (with project name included) attached to construction invoices, design invoices, etc. *OR* other written documentation that the invoice has been paid by the applicant;
 - 2. Copies of all contracts for construction, design or other services for the implementation of the project.

(3) Reimbursement may not occur until the grantee has demonstrated that at least 50% of the approved project has been completed. The terms of said reimbursement shall be clarified in the award contract between MCZM and the grantee. The reimbursement shall be based upon a work program which shall be incorporated by reference into the contract.

An agreed percentage of the CFIP award shall be retained by the Commonwealth until total project completion and a portion shall be designated for final audit purposes.

(4) Harbor Planning Grants. The terms of reimbursement shall be specified in the award contract between MCZM and the grantee, which shall include a work program prepared by the grantee that incorporates MCZM Harbor Planning Guidelines, to an extent deemed appropriate by the Director.

- (a) Initial reimbursement for preparation of a harbor plan, in an amount not to exceed 50% of the grant award, shall occur upon completion of a draft harbor plan, provided that the Director determines that the grantee has adequately and properly conformed with the terms of the contract. In making this determination, the Director may indicate what measures should be taken in further development of the plan to ensure continued or improved conformity with the Guidelines, as reflected in the work program, and to ensure compliance with the standards for acceptance of the plan for purposes of final reimbursement, pursuant to 301 CMR 22.08(4)(b).

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(b) Reimbursement of the remaining 50% of the harbor planning grant (less a percentage retained by the Commonwealth for final audit purposes) shall occur upon completion of the final harbor plan, provided that such plan is accepted by the Director. Such acceptance shall be based upon a finding by the Director that:

1. the objectives, policies, and standards stated in the harbor plan pose no significant conflict with those of EOEa and its agencies; and
2. the implementation program poses no apparent inconsistency with MCZM policies.

In the event the above standards are met but future consistency with MCZM Policies is uncertain, the Director may accept the harbor plan with reservation, through issuance of a written statement which identifies the uncertainty and which may recommend further planning or other measures that would reduce or eliminate the uncertainty. "In any case, the Director's acceptance of the harbor plan is for reimbursement purposes only, and does not constitute an express or implied certification of consistency with MCZM Policies for purposes of any federal or state approval of any specific action that may be associated with plan implementation."

(5) Improvements Costs. Improvement costs are costs incurred by an applicant, as set forth in 301 CMR 22.00 and the value of in-kind contributions made by the applicant or third parties, in accomplishing the objectives of the improvement as approved by MCZM.

(6) Cash Contribution. Cash contributions represent the applicant's cash outlay, including the outlay of money contributed to the applicant by other public agencies and institutions, private institutions and individuals.

(7) Matching Share. Matching share represents the portion of project costs not borne by the bond authorization under St. 1983, c. 589. As prescribed in St. 1983, c. 589, the matching share required is 50% of the funds necessary to complete the proposed project, after which reimbursement will occur for an eligible 50% expended by the applicant of the project costs. Project costs claimed as match shall be incurred on or after January 1, 1983. Harbor planning costs claimed as match shall be incurred on or after January 1, 1988.

(8) In-Kind Contributions. In-Kind contributions represent the value of non-cash contributions provided by the applicant. In-Kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project. These contributions must be made on or before January 1, 1983 for coastal facilities or after January 1, 1988 for harbor plans.

(9) Matching Share Guidelines. General guidelines for computing matching share are as follows:

(a) Matching share may consist of:

1. Charges incurred by the applicant as project costs;
2. Project costs financed with cash contributed or donated to the applicant by other agencies, institutions, or private individuals;
3. Project costs represented by services and real or personal property, or use thereof, donated by other public agencies, institutions or individuals.

(b) All contributions, both cash and in-kind, shall be accepted as part of the applicants' matching share when such contributions meet all of the following criteria:

1. All are verifiable from the applicant's records;
2. Are necessary and reasonable for proper and efficient accomplishment of project objectives;
3. Federal contributions may be used as match unless the other federal program(s) expressly prohibit their use as a match for other programs and these contributions have not previously been used as match for another program.
4. Conform to other provisions of 301 CMR 22.00 and M.G.L. c. 21F.

22.08: continued

(10) In-Kind Contribution Valuation. Specific procedures for the applicants in establishing the value of in-kind contributions from third parties are set forth below:

(a) Valuation of Volunteer Services. Volunteer Services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteered service may be counted as matching if the service is an integral and necessary part of an approved program.

1. Rates for volunteer services. Rates for volunteers should be consistent with those paid for similar work in other activities of the State or local government. In those instances in which the required skills are not found in the application organization, rates should be consistent with those paid for similar work in the labor market in which the applicant competes for the kind of services involved.

2. Volunteers employed by other organizations. When an employer other than the applicant furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

(b) Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Values assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the fair market value of the property at the time of the donation.

(c) Valuation of donated nonexpendable personal property buildings and land or use thereof.

1. The method used for charging matching share for donated nonexpendable personal property, buildings, and land may differ depending upon the purpose of the project as follows:

- a. If the purpose of the project is to furnish equipment, buildings, or land to the applicant or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.
- b. If the purpose of the project is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be made provided that MCZM has approved the charges.

2. The value of donated property will be determined in accordance with the usual accounting policies of the applicant with the following qualifications:

a. Land and buildings. The value of donated land and buildings may not exceed its fair market value at the time of donation to the applicant as established by an independent appraiser (e.g., certified real property appraiser) and certified by a responsible official of the Department of Capital Planning and Operations (DCPO).

b. Nonexpendable personal property. The value of donated non-expendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

c. Use of space. The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space facilities in a privately-owned building in the same locality.

d. Loaned equipment. The value of loaned equipment shall not exceed its fair rental value.

(11) The following requirements pertain to the applicant supporting records for in-kind contributions from third parties:

- (a) A resume shall be required of each volunteer along with a rate of pay and number of hours contributed to the project. This information should be verified and signed by the municipal project manager or director.
- (b) The basis for determining the valuation for personal services, material, equipment, building and land must be documented.

REGULATORY AUTHORITY